

DFSA New Crypto Token Regime

Introduction

The Dubai Financial Services Authority (“DFSA”) issued a new Crypto Token regime on 1st November 2022. The regime is comprehensive, covering not only AML/CFT risks in respect of trading, clearing, holding, or transferring Crypto Tokens but also addresses risks relating to consumer protection, market integrity, custody, and financial resources for service providers. The DFSA has extended the scope of many current financial services activities, to allow firms in the DIFC to be able to provide products and services in relation to Crypto Tokens. We have set out below the key highlights.

Who should read this paper?

- a) Authorised Market Institutions (AMI) wishing to admit Crypto Tokens to trading, or clearing or settlement, on their facilities;
- b) Operators of Alternative Trading Systems (ATS) wishing to trade Crypto Tokens on their facilities;
- c) Digital Wallet Service Providers who safeguard and administer Crypto Tokens;
- d) Authorised Firms wishing to undertake other Financial Services relating to Crypto Tokens, such as dealing in, advising on, or arranging transactions relating to Crypto Tokens, or managing discretionary portfolios or collective investment funds investing in Crypto Tokens;
- e) Persons who intend to apply to the DFSA for a licence to carry out the activities specified above;
- f) Issuers and creators of Crypto Tokens;
- g) Persons undertaking technology support or provision; and
- h) Persons providing legal, accounting, audit, or compliance services in the DIFC.

When will these rules take effect?

The new regime took immediate effect on 1st November. Authorised Firms will be granted a six-month transitional period to comply with the new regulations.

Summary of the DFSA Crypto Regime

Proposed Amendment	Highlights of the new rules	Impact and actions to be taken
1. Definition of Crypto Tokens	<p>a) Prohibit the public offering, promotion, and the provision of financial services of Privacy Tokens or Devices in addition to Algorithmic Tokens in the DIFC.</p> <p>b) Exclude Utility Tokens (“UT”), Non-fungible Tokens (“NFT”) in addition to Central Bank Digital Currencies from the scope of the regulation of the DIFC.</p> <p>c) Introduce an “Accepted Crypto Approach”. Authorised Persons wishing to provide a financial service involving Crypto Tokens will only be able to do so if the token is accepted by the regulator.</p>	<p>a) Issuers of NFTs and UTs and persons who are providing services in relation to NFTs or UTs are required to register with the DFSA as a DNFBP¹ and comply with the AML regime in both the UAE and DIFC.</p> <p>b) Authorised Persons applying for a Crypto Token to be accepted will have to submit details of the Crypto Token and an assessment against the criteria set in the new regulations.</p>
2. Providing Financial Services in relation to Crypto Tokens	<p>a) The following financial services’ scope will be expanded to include Crypto Tokens:</p> <ol style="list-style-type: none"> 1. Dealing in Investments as Principal; 2. Dealing in Investments as Agent; 3. Arranging Deals in Investments; 4. Managing Assets; 5. Advising on Financial Products; 6. Operating an Exchange; 7. Providing Custody; 8. Arranging Custody; 9. Operating a Clearing House; 10. Operating an Alternative Trading System. <p>b) Prohibit Operators of Crowd Funding Platforms from using Crypto Tokens;</p> <p>c) Prohibit Money Service Providers from providing services with Crypto Tokens other than to allow them to use DLT and native tokens;</p>	<p>a) Authorised Persons seeking to provide financial services involving crypto must apply to the DFSA to vary or amend their DFSA license.</p> <p>b) Applicants for DFSA license to carry out a financial service relating to Crypto Tokens must be locally incorporated under DIFC Companies Law and not in the form of branches.</p>

¹ Designated Non-financial Business and Profession

	d) Representative offices will not be allowed to market Crypto Tokens and related financial services.	
3. Retail Client Protections	<p>a) Significant protections for Retail Clients have been introduced including:</p> <ol style="list-style-type: none"> 1. Prohibition on Retail Clients funding their accounts using credit cards and/or credit facilities; 2. Authorised Persons are prohibited from offering promotions, bonuses, or other inducements to Retail Clients in respect of any Crypto Token business; and 3. Limiting leverage in respect of Crypto Token derivatives to a maximum of two to one (margin of 50%). 	<p>a) Authorised Persons must have policies and procedures in place to ensure that Retail Clients do not use credit facilities to fund accounts that are used for trading in Crypto Tokens. The Firm's systems should be configured to reject credit cards or other forms of credit facility as a means of payment.</p> <p>b) Authorised Persons are not prohibited from using incentives in their marketing strategy or for the purpose of client acquisition.</p> <p>c) Authorised Persons must update their policies and procedures to incorporate the 50% margin requirement and actions to be taken once the requirement is breached.</p>
4. External Funds and External Fund Managers	a) The DFSA has made several changes affecting funds investing in Crypto Tokens and the management, marketing, and other financial services in respect of them in and from the DIFC.	<p>b) External Fund Managers will be prohibited from operating a DIFC Fund that invests in Crypto Tokens; and</p> <p>c) DFSA-licensed Fund Manager will not be allowed to establish and operate an External Fund that invests in Crypto Tokens.</p>
5. New Application, Supervision and Assessment Fees	<ol style="list-style-type: none"> a) One-time application fee for seeking DFSA's suitability assessment of a Crypto Token. b) New trading activity fee for AMI/Exchange and ATS/MTF depending on the average daily trading volume c) Higher annual fees for other financial intermediaries wishing to operate with Crypto Tokens; d) Existing Authorised Persons seeking to provide financial services involving crypto must 	<ol style="list-style-type: none"> a) \$10K Application fee for the assessment of Crypto Tokens.; b) Annual trading activity fee on AMI/Exchange and ATS/MTF that ranges between \$150K to \$800k depending on the average daily trading volume; c) The annual supervision fees for financial intermediaries wishing to add Operating in Crypto Tokens will be raised by 1.5x; and

	apply to the DFSA to vary or amend their DFSA license.	d) Variation of license fees will range between \$5k to \$40K.
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